DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

JOHNSON *v.* MUNDY et al.

Nov. 14, 1918.

[97 S. E. 564.]

1. Appeal and Error (§ 78 (3)*)—Decisions Reviewable—"Final Decree or Order."—In suit involving question whether alleged gifts made by intestate should be treated as advancements, held, that order overruling plaintiff's exceptions to insufficiency of answer was not a "final decree or order," within Code 1904, § 3454.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Final Decree or Judgment. For other cases, see 1 Va.-W. Va. Enc. Dig. 439.]

2. Appeal and Error (§ 92*)—Appealable Order.—In suit involving question whether alleged gifts made by intestate should be treated as advancements, order overruling plaintiff's exceptions to insufficiency of answer held, in view of the fact that defendants could not testify to transactions with intestate, to determine rules of evidence and to be appealable within Code 1904, § 3454, as to appeal from "decree or order * * * adjudicating the principles of a cause."

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 445.]

3. Witnesses (§ 159 (7)*)—Competency—Transactions with Intestate.—In suit involving question whether alleged gifts by intestate should be treated as advancements, respondents would not be competent witnesses to supply evidence explaining gifts.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 940-1.]

4. Descent and Distribution (§ 115*)—Advancements—Evidence.—In cases of alleged advancements, the mere factum of a substantial gift, unexplained, is in itself evidence that the gift was intended as an advancement.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 190-1.]

5. Equity (§ 188*)—Answer—Necessity of Discovery.—Under Code 1904, § 3281, plaintiff, who, in suit for settlement of estate, prayed for certain disclosures of fact by defendants in aid of equitable relief, but waived answer under oath, could not, regardless of whether discovery sought was a pure or mixed bill, except to an-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

swer because respondents, although answering fully as to other portions of bill, failed to make discovery asked for.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 401; 4 Va.-W. Va. Enc. Dig. 670.]

6. Equity (§ 137*)—Discovery—Object.—The immediate object of discovery in all bills in equity was in its origin, and still is, to obtain evidence and not to obtain relief.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 657, 665.]

7. Equity (§ 184*)—Answer—Sufficiency.—The answer as a pleading may traverse each and all of the material allegations of the bill directly, distinctly, categorically, and unequivocally; but, if the plaintiff insists upon a full answer, it must go further and state affirmatively the facts constituting the defense.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 398.]

8. Equity (§ 181*)—Time for Filing Answer.—That under Code 1904, § 3275, a defendant may be allowed under certain restrictions to file his answer at any time before final decree, does not affect the right of plaintiff by proper proceedings to have the court compel defendant to answer sooner.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 374-5.]

9. Equity (§ 189*)—Discovery—Sufficiency.—Plaintiff is entitled to insist upon an answer, not only according to the knowledge of the defendant, but also as to his remembrance, information, and belief.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 398-9.]

10. Equity (§ 330 (1)*)—Answer—Effect of Waiver of Oath.—An answer not under oath, in pursuance of waiver in bill, is not free from all exception for insufficiency.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 401.]

11. Equity (§ 137*)—Discovery—Relevancy of Matter Sought.—Modern equity procedure as to affirmative statement of defense in answer, when considered merely as a pleading, does not allow plaintiff to compel defendant to add to his answer facts not a part of defense and which plaintiff needs as evidence to support his case.

12. Equity (§ 315*)—Verification of Answer—Compelling Discovery by Answer.—It was not the object of Code 1904, § 3281, to change the equitable rule which required, and still requires, an answer under oath as inseparable from the right to compel a discovery by answer.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 671.]

13. Equity (§ 188*)—Discovery by Answer—Waiver of Oath.—Where plaintiff waived answer under oath, defendants, who answered fully all of the allegations of the bill except the interroga-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tory, could refrain from answering further; the rule that defendants must answer fully not applying.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 670.]

Appeal from Circuit Court, Nelson County.

Bill by John E. Johnson, in his own right and as administrator of C. I. Johnson, deceased, against Annie C. Mundy and others for the settlement, distribution, and division of the estate of said deceased. There was a decree or order overruling exceptions taken by plaintiff to insufficiency of answer, filed by named defendant and her husband, and plaintiff petitioned for an appeal, which was granted. Order complained of affirmed.

Caskie & Caskie, of Lynchburg, for appellant.

Harrison & Long, of Lynchburg, and *Aubrey E. Strode,* of Amherst, for appellees.

IRVINE *v.* COMMONWEALTH.

Jan. 16, 1919.

[97 S. E. 769.]

1. **Health (§ 23*)—Roller Towels—"Public Lavatories."**—Lavatories for tenants of an office building owned by an individual, which are kept locked, keys being furnished the tenants, are not "public"—that is, open to all who may choose to use them—within Act March 11, 1916, prohibiting the use of roller towels in "public lavatories."

2. **Statutes (§ 110½ (4)*)—Subject and Title.**—So much of Act March 17, 1916, as relates to office buildings, is void under Const. 1902, § 52, the title enumerating the places in which it shall be unlawful to use roller towels, as any "hotel, * * * railway train, railway station, public or private school, public lavatory or washroom."

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 750.]

Error to Corporation Court of Norfolk.

Walter Irvine was convicted in the corporation court, on appeal from a police justice, of violation of the statutes against use of roller towels, and brings error. Reversed and remanded.

Jas. G. Martin, of Norfolk, for plaintiff in error.

The Attorney General, for the Commonwealth.

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